IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE CIVIL JURISDICTION

FIRST APPEAL NO.175 OF 1996

1) Prabhavati Ramchandra Kamat)
Adult, Occ.: Household work)

2) Nandkumar Ramchandra Kamat)
Adult, Occu.: Labourer)
Both residing at Vaniali, Chiplun)
Tal.: Chiplun, Dist.: Ratnagiri.).. APPELLANTS

Versus

1) Uday Sudhakar Maduskar (deceased))
heirs father Sudhakar D. Maduskar)
Adult, Occ.: Business, residing at)
Waghadhare, Tal.Satara, at present)
residing at Vadnaka, Chiplun.)

2) United India Insurance Company)
through Branch Manager, Chiplun.)

3) Sou.Shila Sudhakar Maduskar)
Adult, Occ.: Household work)
residing at 229, Sonarali, Vadnaka)
Chiplun, Dist.: Ratnagiri.).. RESPONDENTS

Mr.S.M.Kazi for the Applicants.

Mr.J.M.Patel for Respondent No.2.

CORAM: SMT.NISHITA MHATRE, J.
DATED: 8TH JULY 2005

ORAL JUDGMENT :

. This First Appeal is directed against the judgment dated 19th March 1993 passed by the Civil Judge, Senior Division and Ex-Officio Commissioner for Workmen's Compensation, Ratnagiri in Workmen's Compensation Case No.26 of 1989. The Appellants are the mother and brother respectively of the deceased Sanjay Kamat. According to the Appellants, Sanjay Kamat was engaged as a Driver by Respondent No.1 Uday Maduskar.

Uday Maduskar owned a tempo which he used as a transport vehicle and ran it between different destinations. According to the Appellants, Sanjay was employed as a Driver on this tempo for a monthly salary of Rs.1800/-. On 23rd July 1989, Sanjay and Uday were travelling from Ratnagiri to Mumbai. The tempo was halted on 24th July 1989 near Wakan Bridge, Nagothane. It appears that, on that day, there were heavy floods and the tempo was washed away with the passengers. Sanjay who was at the wheel and Uday were also washed away. The Appellants filed the present application under the Workmen's Compensation Act claiming compensation from the heirs of Uday since they claimed that Sanjay was engaged as a Driver by Uday for his transport business.

2. The Commissioner, on an appraisal of the evidence led before him, has found that there is no documentary evidence with the Appellants to indicate and prove that Sanjay was engaged as a Driver with Uday. The Commissioner chose not to believe the statement made by Nandkumar in his evidence that Sanjay was engaged as a Driver by Uday as the Commissioner felt that he was an interested witness. The Commissioner was fortified in his view since several statements made by Nandkumar in his evidence were not evident either in the application filed before the Commissioner or in the FIR lodged. Nandkumar claimed that he was in the tempo which was driven by Sanjay. Uday, although present, was not

driving the tempo. Nandkumar claimed that he travelled in the tempo upto Wakan. He received news of the accident when he reached Roha. He lodged a complaint with the Roha Police Station. A copy of the FIR was not brought on record.

3. The Commissioner has chosen to believe the evidence of Uday's father and has found that Sanjay was never employed as a Driver. Uday's father has, however, admitted that Sanjay was occasionally engaged by Uday as a Driver on the tempo on daily wages per trip. According to this witness, the entire claim made by the Appellants was false as Sanjay was never engaged on a regular basis with Uday.

4. The Commissioner has not committed any error in disbelieving the evidence of Nandkumar. However, the reason for disbelieving the same is not correct. Merely because Nandkumar is the brother of the deceased Sanjay and also a claimant, it would not be said that his evidence is required to be discarded totally. Besides the oral evidence of Nandkumar, there is no documentary evidence on record to show that there was any employer-employee relationship between Sanjay and Uday. Nor has it been shown by any document that Sanjay was paid specific amount by Uday for driving the tempo. The Appellants have, therefore, not been able to prove their claim before the Commissioner and hence, I see no

infirmity in the order of the Commissioner. Appeal dismissed.